

§ 205.1

AUTHORITY: Sec. 204, 49 Stat. 1987, 1998, 2004, 2011; 46 U.S.C. 1114, 1155, 1176, 1212.

SOURCE: General Order 78, Rev., 30 FR 11680, Sept. 11, 1965, unless otherwise noted.

CONTRACTS WITHOUT DISPUTES ARTICLE

§ 205.1 Purpose.

The purpose of this part is to establish the policy and procedure for seeking redress and for appeals by parties to any contracts entered into by the Maritime Subsidy Board or the Maritime Administration under its authorities, from the findings, interpretations, or decisions reflected in annual or special audits made by the Maritime Administration pursuant to the provisions of such contracts.

§ 205.2 Policy.

Any contractor who disagrees with the findings, interpretations, or decisions in connection with audit reports of the Maritime Administration and who fails to settle said differences by negotiation with the appropriate Coast Director's office, may submit an appeal from such findings, interpretations, or decisions in accordance with § 205.3.

§ 205.3 Procedure.

(a) Appeals shall be made in writing to the Maritime Administrator within 6 months following the date of the document notifying the contractor of the audit findings, interpretations, or decisions of the appropriate Coast Director's office. However, the Maritime Administrator may, at his discretion, extend this limitation in the case of extenuating circumstances.

(b) The appellant will be notified, in writing, if a hearing is to be held or if additional facts are to be submitted for consideration in connection with the appeal.

(c) After a decision has been rendered by the Maritime Administrator, the appellant will be notified accordingly, in writing.

§ 205.4 Finality of decisions.

A decision of the Maritime Administrator shall be final on all questions of fact involved in the appeal, unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, so grossly erroneous

46 CFR Ch. II (10–1–96 Edition)

as necessarily to imply bad faith, or not supported by substantial evidence.

CONTRACTS WITH DISPUTES ARTICLE

§ 205.5 Contracts containing disputes article.

Where the contract contains a disputes article the contractor may dispute audit findings, interpretations, or decisions made by the Maritime Administration pursuant to the provisions of said contract and the decision on such dispute and any appeal therefrom shall be governed by the terms of the disputes article of the contract.

PART 207—STATISTICAL DATA FOR USE IN OPERATING-DIFFERENTIAL SUBSIDY APPLICATION HEARINGS

Sec.

207.1 Purpose.

207.2 Basic statistical data.

207.3 Procedures.

AUTHORITY: Sec. 204(b), Merchant Marine Act, 1936, as amended (46 U.S.C. 1114), Reorganization Plans No. 21 of 1950 (64 Stat. 1273) and No. 7 of 1961 (75 Stat. 840) as amended by Pub. L. 91-469 (84 Stat. 1036); Department of Commerce Organization Order 10-8 (38 FR 19707, July 23, 1973).

SOURCE: 41 FR 50257, Nov. 15, 1976, unless otherwise noted.

§ 207.1 Purpose.

The purpose of this part is to identify the basic statistical data and reports required by the Maritime Subsidy Board (Board) in hearings held under section 605(c), Merchant Marine Act, 1936, as amended (Act), in regard to applications for operating-differential subsidy (ODS) under Title VI of the Act and to provide procedures for the production of these data and reports. Statistical data not expressly covered by this part are subject to subpart A of part 206 of this subchapter. There shall be no charge for the production of the basic statistical data and reports identified in this part.

§ 207.2 Basic statistical data.

(a) *Data and reports available.* The basic statistical data and reports that will be provided pursuant to § 207.3 of this part in regard to any hearing held by the Board under section 605(c) of the

Maritime Administration, DOT

§ 207.2

Act in connection with an application for ODS are as follows, with the accompanying “Notes” forming an integral part of each report:

19__ CENSUS TRADE DATA ¹ MSB DOCKET _____
Report 001 Page _____ Date prepared _____

Trade route	Commodity	Commodity description	Inbound liner ²				Percent United States	
			Tonnage		Value		Total	
			United States	Foreign	United States	Foreign	United States	Total

Total trade route by inbound liner³
(For an explanation of terms and numbers see "Notes".)

19— CENSUS TRADE DATA ⁴ MSB DOCKET _____
Report 002 Page _____ Date prepared _____

Trade route	Coastal district	Foreign country	Commodity	Commodity description	Inbound liner ²				Percent United States	
					Tonnage		Value		Total	
					United States	Foreign	United States	Foreign	United States	Total

Total trade route by coastal district by foreign country by inbound liner⁶
Total trade route by coastal district by inbound liner⁵
Total trade route by inbound liner³
(For an explanation of terms and numbers see "Notes".)

19— MARAD LINER FOREIGN TRADE DATA ⁷ MSB DOCKET _____
Report 003 Page _____ Date prepared _____

Trade route	Coastal district	Foreign country	Flag	Inbound				Outbound		
				Tonnage		Value		Tonnage		
				General	Bulk	Defense	Total	General	Bulk	Defense

Total trade route by coastal district by foreign country⁸
Total trade route by coastal district⁹
Total trade route¹⁰
(For explanation of terms and numbers see "Notes".)

19— MARAD CONTAINERIZED FOREIGN TRADE DATA ¹¹ MSB DOCKET _____
Report 004 Page _____ Date prepared _____

Trade route	Coastal district	Foreign country	Flag	Inbound				Outbound			
				Tonnage		Value		Tonnage		Value	
				Commercial	Defense	Commercial	Defense	Commercial	Defense	Commercial	Defense

Total by trade route by coastal district by foreign country⁸
Total by trade route by coastal district⁹
Total by trade route¹⁰
(For an explanation of terms and numbers see "Notes".)

19— MARAD SAILINGS FOREIGN TRADE DATA¹² MSB DOCKET _____

Report 005 Page _____ Date prepared _____

Trade route	Flag	Sailing ¹³		Total
		Inbound	Outbound	
Total sailings by trade route ¹⁴				
Total sailings ¹⁵				
(For an explanation of terms and numbers see "Notes.")				

NOTES

EXPLANATION OF TERMS

Trade Route—A two digit numerical code signifying a waterborne route between a specific U.S. coastal district(s) and foreign port range.

Commodity—A three digit numerical Statistical Classification of Commodities (SCC) code assigned by the Bureau of the Census to a major category of commodities.

Commodity Description—A literal definition of each three digit numerical (SCC) code.

Value Outbound—The dollar value of commodities at time and place of export. It is based on the selling price (or cost if not sold) and includes inland freight insurance, and other charges to the port of exportation.

Value Inbound—The market dollar value of commodities in the exporting foreign country, and therefore excludes U.S. import duties, freight charges from the foreign country to the United States and insurance.

Tonnage Inbound—The number of long tons (2,240 lbs.) of entries for immediate consumption and entries into customs bonded storage and manufacturing warehouses. Excludes American goods returned by U.S. military forces for their own use and imports arriving on vessels owned and operated by the Department of Defense.

Tonnage Outbound—The number of long tons (2,240 lbs.) of foreign merchandise, including nongovernment shipments, shipments to U.S. civilian government agencies, and government-financed economic assistance shipments under the Foreign Assistance Act. Excluded from the figures are shipments of supplies and equipment to U.S. military forces for their own use, shipments of DOD controlled cargo under foreign aid programs, and all shipments of Special Category commodities (commodities for which detailed information may not be released for security reasons).

Inbound—A vessel movement to the United States from a foreign country.

Outbound—A vessel movement to a foreign country from the United States.

Liner—Type of Service offered on a definite, advertised schedule and giving relatively frequent sailings at regular intervals between specific United States ports or range and designated foreign ports or range.

Non-Liner—Type of service offered by vessels, other than liner or tanker vessels, that are chartered or otherwise hired for the carriage of goods on special voyages. Sailing schedules are not predetermined or fixed.

Tanker—Type of Service offered by vessels, primarily designed for the carriage of bulk liquid cargoes, which are chartered or otherwise hired for special voyages.

Foreign Country—A three digit numerical code classification as defined by the Bu-

reau of the Census' Schedule C, "Classification of Country Designations", dated January 1, 1972.

Flag—A two digit numerical code signifying the country in which a vessel is registered.

Coastal District—A one digit numerical code depicting a specific United States coastal area as follows:

1. North Atlantic—Maine to Virginia/North Carolina state line.
2. South Atlantic—Virginia/North Carolina state line to Key West, Florida.
3. Gulf—Key West, Florida, to the border of Mexico.
4. California—California.
5. Pacific Northwest — Washington and Oregon.
6. Great Lakes—All U.S. ports on the Great Lakes system.
7. Hawaii—All ports in the Hawaiian Islands.
8. Alaska—All ports in Alaska and the Aleutian Islands.
9. Puerto Rico—Puerto Rico and the Virgin Islands.

Bulk—Commodities customarily loaded and carried without wrappers or containers, and received and delivered without transportation mark or count whether such cargo is handled on berth terms, voyage charter, or any other basis.

General—Miscellaneous commodities packed in boxes, bags, bales, barrels, containers, crates, drums, unboxed or uncrated, accepted and delivered by mark and count.

Defense—Cargo transported for the U.S. Department of Defense, including the Military Sealift Command.

Commercial—Combination of general and bulk cargoes.

Containers—The number of containers represents the total of all containers transported regardless of size or TEU's.

Cubic Feet—The number of cubic feet represents the total cargo contained and transported within containers regardless of the interior cubic capacity of the containers.

EXPLANATION OF NUMBERS

¹19__ Census Trade Data—The data base for this report is the Census Annual Commodity Movements. The report was formerly known as Table 42A.

²Inbound Liner—this heading indicates the type of data contained in the report; other headings for the report are:

Outbound Liner
Inbound Non-Liner
Outbound Non-Liner
Inbound Tanker
Outbound Tanker

³Total Trade Route By Inbound Liner—At the end of the data for each trade route a total is provided for the category; other categories for the report are:

Total Trade Route By Outbound Liner

Total Trade Route By Inbound Non-Liner
 Total Trade Route By Outbound Non-Liner
 Total Trade Route By Inbound Tanker
 Total Trade Route By Outbound Tanker

⁴19__ Census Trade Data—The data base for this report is the Census Annual Commodity Movements. The report was formerly known as Table 44B.

⁵Total Trade Route By Coastal District By Inbound Liner—At the end of the data for each coastal district a total is provided for the category; other categories for the report are:

Total Trade Route By Coastal District By Outbound Liner
 Total Trade Route By Coastal District By Inbound Non-Liner
 Total Trade Route By Coastal District By Outbound Non-Liner
 Total Trade Route By Coastal District By Inbound Tanker
 Total Trade Route By Coastal District By Outbound Tanker

⁶Total Trade Route By Coastal District By Foreign Country By Inbound Liner—At the end of the data for each foreign country a total is provided for the category; other categories for the report are:

Total Trade Route By Coastal District By Foreign Country By Outbound Liner
 Total Trade Route By Coastal District By Foreign Country By Inbound Non-Liner
 Total Trade Route By Coastal District By Foreign Country By Outbound Non-Liner
 Total Trade Route By coastal district By Foreign Country By Inbound Tanker
 Total Trade Route By Coastal District By Foreign Country By Outbound Tanker

⁷19__ MARAD Liner Foreign Trade Data—The data base for this report is the MARAD Foreign Trade System. This System contains liner information only and is collected from MA Forms 721/722.

⁸Total Trade Route By Coastal District By Foreign Country—A total is provided at the end of each foreign country.

⁹Total Trade Route By Coastal District—A total is provided at the end of each coastal district for all foreign countries.

¹⁰Total Trade Route—A total is provided at the end of each trade route for all coastal districts.

¹¹19__ MARAD Containerized Foreign Trade Data—The data base for this report is the MARAD Container System. This system contains information collected from MA Forms 578A for any vessel carrying ten or more containers.

¹²19__ MARAD Sailings Foreign Trade Data—The data base for this report is the MARAD Foreign Trade System. This system contains liner information only and is collected from MA Forms 721/722.

¹³Sailings—The actual number of “Outbound” and “Inbound” sailings made by vessels of specific flags of registration on a spe-

cific trade route is provided. A sailing constitutes an initial entrance to or a final clearance from the United States of a vessel.

¹⁴Total Sailings By Trade Route—A total is provided at the end of each trade route.

¹⁵Total Sailings—A total is provided at the end for all trade routes.

(b) *Time frame of data and reports provided.* The basic statistical data and reports provided by this part will be for the most recent three full calendar years for which such data is available in final form on the date the Board issues its referral order for a hearing on any ODS application. No preliminary data and no data for parts of a calendar year will be provided under this part. Any request for preliminary data or data for any part of a calendar year should be made under subpart A of part 206 of this subchapter. Data requested for any calendar year more recent than the three years described in this paragraph should also be made under subpart A of part 206 of this subchapter.

(c) *Confidentiality.* The original sources of basic statistical data furnished under this part are “business confidential” and data shall not be supplied in such form as to permit competitors to extrapolate the data supplied by the original sources to the Maritime Administration and, thereby, determine the carryings of individual competitors. Appropriate written waivers of confidentiality from persons supplying data will be accepted and honored by the Maritime Administration to the extent practicable in the preparation of statistical data and reports under this part.

§207.3 Procedures.

(a) *Request.* The procedures for production of basic statistical data and reports under this part may be initiated only by the written request of a party to a hearing under section 605(c) of the Act in connection with an ODS application. The term “party” includes the applicant, Public Counsel, and any other person whose petition to intervene has been granted. The request shall identify the specific format of data sought according to the report numbers listed in §207.2 of this part and shall state the trade routes or trade areas covered by the ODS application and identified by the Board in its section 605(c) notice as published in

the FEDERAL REGISTER. The letter requesting data and reports should be addressed to the Chief, Division of Trade Studies and Statistics (Code M-522), Maritime Administration, U.S. Department of Transportation, Room 4075, 14th and E Streets NW., Washington, DC 20590. Concurrently, the requesting party shall furnish a copy of the request to the presiding Administrative Law Judge (for inclusion in the correspondence section of the official docket) and to each other party to the hearing.

(b) *Determination of data and reports.* The Chief, division of Trade Studies and Statistics, shall review and define the basic statistical data and reports applicable to a party's request, with special attention to §207.2(c) of this part, and promptly take all necessary steps to effect production. He shall expeditiously notify the requesting party, with a copy to all other parties and to the presiding Administrative Law Judge (for inclusion in the correspondence section of the official docket), as follows: the basic statistical data and reports being produced; and the schedule for distribution thereof to the parties and to the presiding Administrative Law Judge.

(c) *Transmission of data package.* Once the Chief, Division of Trade Studies and Statistics, has assembled the basic statistical data and reports, he shall promptly transmit them to:

- (1) The requesting party (one copy);
- (2) Public Counsel (one copy);

(3) Each other party (one copy each); and

(4) The presiding Administrative Law Judge (two copies: one copy of which shall be received into evidence in the hearing docket, pursuant to §201.132(g) of this subchapter, and the other copy of which shall be for the personal use of the presiding Administrative Law Judge).

(d) *Dispute as to scope of data and reports.* If any party to the hearing disputes the scope of data and reports to be produced as defined in the notice issued by the Chief, Division of Trade Studies and Statistics, review by the Director, Office of Subsidy Administration, may be obtained by such party through filing of a written request for review with the Director, Office of Subsidy Administration. Concurrently, the requesting party shall furnish a copy of the request to the presiding Administrative Law Judge (for inclusion in the correspondence section of the official docket) and to each other party to the hearing. On the basis of the request for review, and such comments as any other party to the hearing may have filed within ten (10) days of the date on the request, the Director, Office of Subsidy Administration, shall determine the proper scope of the basic statistical data and reports to be produced. The determination shall be final. A copy of the determination shall be furnished to each party and to the presiding Administrative Law Judge (for inclusion in the correspondence section of the official docket).